Human Rights Regulations
Frequently Asked Questions

Section of Regulations	Clarification Requested	Clarification Provided
Informal and Formal Complaint Process **160/170**	If initiated as an informal complaint, is the director/designee's written decision and action plan required in 10 days from the date the formal complaint was received or 10 days from being submitted to the director/designee as an informal complaint?	The written decision and action plan are required 10 days from the complaint becoming a Formal Complaint. The complaint becomes formal when contact is made with the human rights advocate. According to the definition of "complaint" a complaint is "informal" when a resolution is pursued prior to contact with the human rights advocate.
Informal Complaint **160, F**	This section indicates that the human rights advocate shall have access to information regarding all informal complaints upon request. Is the implication here that the complaint process will be centralized at the director/designee level? This would ensure that Informal Complaints are elevated to the directors level and readily available to the advocate upon request.	The regulations do not specify that the Informal Complaint process will be centralized at the Directors or any level. It is up to the provider to decide how best to meet this standard. DMHMRSAS recommends that the provider discuss this process with the human rights advocate.
Informal Complaint **160**	What is the Informal Complaint process? How is it different from the Formal Complaint process?	A flow chart has been developed to illustrate this process. The flow chart is posted on the Office of Human Rights Web page.
Use of seclusion, restraint and time out **110,C,3,(a &b)**	What is a restrictive procedure? Who decides? Where are restrictive procedures listed? Is there a list of prohibited procedures? What is the scope of the LHRC as an approval authority for behavioral plans?	The term restrictive "procedure" is not used in the regulations. The LHRC approves or disapproves behavioral treatment plans that include the use of seclusion or restraint.
Offices, compositions and duties **250, A, 5**	A. Providers and their directors shall: 5. Communicate information about the availability of a human rights advocate and assure an LHRC to all individuals receiving services. How will providers do this? What is the process for becoming affiliated with an LHRC?	The provider should contact the Regional Advocate that serves its particular area for assistance with affiliation with a Local Human Rights Committee. Click on the Office of Human Rights Roster at the DMHMRSAS web site, to find out the names of the Regional Advocates.

Restrictions on freedoms of everyday life 100, B, 5	Are consumers coming from Court or Drug Court and admitted under 18.2-254 for substance abuse or 37.1-67.1 considered to be a Jail Transfer or coming from detention? If so, what kind of restrictions on personal freedom may be imposed per 100, B,5?	Individuals whose custody is transferred from a local, state or federal adult correctional or juvenile correctional agency to DMHMRSAS are considered to be transferred from jail or detention. If any court sends the individual to the provider, only those restrictions permitted by the regulations may be imposed unless the court order indicates otherwise.
Dignity 50, D (e)	What is a "trained" investigator?	A "trained" investigator is someone who has experience conducting investigations or has received instruction in investigations. The provider must document such experience or instruction
Restrictions on freedoms of everyday life 100, C, 1	C. Exceptions and conditions on the provider's duties. 1. Except as provided in 12 VAC 35-115-50 (E) providers may impose restrictions if a qualified professional involved in providing services to the individual has, in advance What does "except as provided…" mean?	"Except as provided" in section 12 VAC 35-115 100, C, 1 means "unless limited by."

Special procedures for LHC reviews involving consent 200	What is the role of the LHRC in reviewing consent? Does the LHRC "agree" with a determination of capacity? C. Step 3: The LHRC shall issue its decision within 10 working days of the initial request. 1. If the **LHRC agrees** that the individual lacks the capacity to consent, the director may begin or continue treatment or research, or disclose the information, but only with the appropriate consent of the legally authorized representative. The LHRC shall advise the individual of his right to appeal this determination to the SHRC under 12 VAC 35-115-210. 2. If the **LHRC does not agree** that the individual lacks the capacity to consent, the director shall not begin any treatment, research or information disclosure without the individual's consent, or shall take immediate steps to discontinue use of medication if it has already begun. The director may appeal to the SHRC under 12 VAC 35-115-210 but may not take any further action until the SHRC issues its opinion.	The LHRC cannot make capacity determinations. The LHRC does not practice medicine. It is a violation of the Code of Virginia for individuals to practice any profession requiring a license without that license. The role of the LHRC is to weigh the evidence presented to the committee, by individuals who are qualified to make capacity determinations, regarding the capacity or incapacity of the individual and issue a decision based upon the evidence presented to them. Section 12 VAC-35-115-200 also clarifies how this process works. If two capacity reviewers yield different conclusion, then the LHRC may hear evidence regarding those two capacity reviews and render a decision based on those two determinations.
Participating in Decision Making 70, A, 5	How will the ECT provision be implemented?	The Department will provide a check list to assist with the implementation of this section of the regulations. The ECT check list can be found on the Office of Human Rights web page.

Participating in Decision 70, B, 9	What is the standard for clearly better qualified? Doesn't this conflict with the Health Care Decision Act?	The "clearly better qualified" is not less restrictive than the Health Care Decisions Act, §54.1-2986 of the Code of Virginia, but *more* restrictive. The Health Care Decisions act requires that a surrogate decision maker be "available, willing and competent", or members of a lower priority may be chosen. Under the regulations, the director may not appoint someone of lower priority unless the person is *clearly* better qualified (as well as available, willing, and competent). However, provider policies may address how surrogate decision-makers may be chosen out of priority, as long as it *at least* meets the regulatory standard.
Reporting Requirements 230	When do the reporting requirements begin (year of information to be provided) and in what format should the information be provided?	The annual reporting of seclusion and restraint data will commence on January 15, 2003 to include all seclusion and restraint data from November 21, 2001 forward. This report will be submitted to the Office of Health and Quality Care. All state facility reporting will be done according to the appropriate Departmental Instruction. For providers other than state facilities: ♦ Reports of deaths and serious injuries will continue to be made in accordance with current practice and in the current format to the Office of Licensing. ♦ Reports of abuse and neglect will continue to be made to the Regional Advocate and entered into CHRIS

Services **60, B, 3**	3. Providers shall develop and implement policies and procedures that address emergencies. These policies and procedures shall: a. Identify what caregivers may do to respond to an emergency. b. Identify qualified clinical staff who are accountable for assessing emergency conditions and determining the appropriate intervention. c. Require that the director immediately notify the individual's legally authorized representative, if there is one, and the advocate if an emergency results in harm or injury to any individual. d. Require documentation in the individual's services record of all facts and circumstances surrounding the emergency. What type of emergencies does this section refer too?	"Emergency", under these regulations, means a situation that requires a person to take immediate action to avoid harm, injury, or death to an individual receiving services or to others or to avoid substantial property damage.